

BILL NO. G-88-0324

GENERAL ORDINANCE NO. G-

Withdrawn

AN ORDINANCE amending the Thoroughfare
Plan of the City Comprehensive ("Master")
Plan by vacating a dedicated utility easement thereof.

WHEREAS, a petition to vacate a dedicated utility
easement within the City of Fort Wayne (as more specifically
described below) was duly filed with the City Planning
Commission; and

WHEREAS, said Commission duly held a public hearing
thereon; and

WHEREAS, said Commission has duly forwarded its
recommendation to this body approving said petition, all in
accordance with I.C. 36-7-4-512(2) and this body having held
a public hearing on said vacation as provided in I.C. 36-7-
4-12; and

WHEREAS, this body concurs in the recommendation of the
City Planning Commission.

NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF
THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the petition filed herein to vacate a
dedicated utility easement within the City of Fort Wayne,
more specifically described as follows, to-wit:

Beginning at the Northeast corner of Lot 67 in
Lincoln Park Addition; thence on and along the
north lot line of said Lot 67 a distance of three
(3) feet to a point; thence south on a line
parallel to the east line of said Lot 67 a
distance of 37.5 feet to the south lot line of
said Lot 67; thence east on and along the south
line of said Lot 67 a distance of three (3) feet
to the Southeast corner of said lot; thence north
on and along the east line of said Lot 67 a
distance of 37.5 feet to the point of beginning.

and which vacating amends the Thoroughfare Plan of the City
Comprehensive ("Master") Plan and is hereby approved in all
respects.

SECTION 2. That this Ordinance shall be in full force

and effect from and after its passage, any and all necessary approval by the Mayor.

Janet G. Bradbury
COUNCILMEMBER

APPROVED AS TO FORM AND LEGALITY:

J. Timothy McCauley
J. TIMOTHY MCCAULAY, CITY ATTORNEY

** Public hearing to be held on _____,
the _____ day of _____, 1988,
in the Council Chambers.

Sandra E. Kennedy, City Clerk

Read the first time in full and on motion by Bradbury, seconded by Delaine, and duly adopted, read the second time by title and referred to the Committee on Regulations (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on _____, 19____, at _____ o'clock _____ M., E.S.T.

DATE: 3-22-88

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by _____, seconded by _____, and duly adopted, placed on its passage. PASSED LOST by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT</u>
<u>TOTAL VOTES</u>	_____	_____	_____	_____	_____
<u>BRADBURY</u>	_____	_____	_____	_____	_____
<u>BURNS</u>	_____	_____	_____	_____	_____
<u>GiaQUINTA</u>	_____	_____	_____	_____	_____
<u>HENRY</u>	_____	_____	_____	_____	_____
<u>LONG</u>	_____	_____	_____	_____	_____
<u>REDD</u>	_____	_____	_____	_____	_____
<u>SCHMIDT</u>	_____	_____	_____	_____	_____
<u>STIER</u>	_____	_____	_____	_____	_____
<u>TALARICO</u>	_____	_____	_____	_____	_____

DATE: _____

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL) (SPECIAL) (ZONING MAP) ORDINANCE RESOLUTION NO. _____ on the _____ day of _____, 19____,

ATTEST:

SEAL

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the _____ day of _____, 19____, at the hour of _____ o'clock _____ M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this _____ day of _____, 19____, at the hour of _____ o'clock _____ M., E.S.T.

Paul Helmke
PAUL HELMKE, MAYOR

RECEIPT

No 2765

COMMUNITY DEVELOPMENT & PLANNING

FT. WAYNE, IND., 2-23 '19 88

RECEIVED FROM Elaine Hall \$ 100.00
THE SUM OF one hundred & 00/100 DOLLARS
ON ACCOUNT OF segment vacation

AUTHORIZED SIGNATURE [Signature]

VACATION ORDINANCE
PETITION TO VACATE DEDICATED
UTILITY EASEMENT.

TO:

THE CITY PLAN COMMISSION
CITY OF FORT WAYNE, INDIANA.

The undersigned petitioner does hereby respectfully petition the Fort Wayne city plan commission to vacate the following: Dedicated utility easement within the city of Fort Wayne, Indiana and hereby described as follows:

Beginning at the N.E. corner of LOT#67 in Lincoln Park Addition, thence west on and along the north lot line of said lot#67 a distance of (3) feet to a point, thence south on a line parallel to the east line of said lot#67 a distance of 37.5 feet to the south lot line of said lot#67, thence east on and along the south line of said lot#67 a distance of (3) feet to the S.E. corner of said lot, thence north on and along the east line of said lot 67 a distance of 37.5 ft to the point of beginning.

In support thereof the petitioner would represent as follows: that they are the only owners of the real estate bordering both sides of the utility easement.

1. The easement was platted in 1928 before this area was annexed into the city.
2. There is at this time a (3) foot encroachment into the easement of lot 67, that existed previous to 1950.
3. This encroachment needs to be rectified for title purposes and residential construction.
4. Residential construction would not extend any further than current structure.

Bobby E & Diane K Hall 2712 Poinsette Dr. Ft Wayne Ind.

FILES this petition pursuant to the authority granted in Indiana code, section 36-7-4-512 in order to complete the vacation as described.

WHEREFORE Bobby & Diane Hall pray that the above described utility easement be vacated according to the provisions of the Indiana Law pertaining thereto.

Dated this 23 Day of FEBRUARY 1988

Adjacent property owner signature

Petitioner signature

Bobby E Hall
Diane K. Hall

Bobby E Hall
Diane K. Hall

petitioner address

2712 POINSETTE DR.

AGENT

Bobby & Diane Hall
2712 Poinsette DR.

PH#484-4203

CDP#332

ORIGINAL

DIGEST SHEET

ORIGINAL

9-88-03-24

TITLE OF ORDINANCE Utility Easement Vacation

DEPARTMENT REQUESTING ORDINANCE CD&P - Land Use Management

SYNOPSIS OF ORDINANCE 3' Utility Easement running north and south along the
East property line of Lot 67 in Lincoln Park Addition.

EFFECT OF PASSAGE Property is presently a dedicated utility easement.
Property will be vacated and revert to the adjacent property owners.

EFFECT OF NON-PASSAGE Property will remain a dedicated utility easement.

MONEY INVOLVED (Direct Costs, Expenditures, Savings) _____

(ASSIGN TO COMMITTEE (J.N.) _____

FACT SHEET

G-88-03-24

**Division of Community
Development & Planning****BILL NUMBER****BRIEF TITLE**

Utility Easement Vacation

APPROVAL DEADLINE**REASON****DETAILS****Specific Location and/or Address**

3' Utility Easement running N/S along the
East property line of 2712 Poinsette Dr.

Reason for Project

Encroachment discovered in title search.

Discussion (Including relationship to other Council actions)

21 March 1988 - Public Hearing

See Attached Minutes of Public Hearing

At the public hearing a motion was made seconded and approved that this request be deferred to give the petitioners a chance to work out obtaining waivers from the utility companies to allow them to encroach into the easement rather than to vacate the easement.

A letter was submitted by the petitioners on March 27, 1988 requesting that the vacation petition be WITHDRAWN.

POSITIONS**RECOMMENDATIONS****Sponsor**

City Plan Commission

Area Affected

City Wide

Other Areas

**Applicants/
Proponents****Applicant(s)**

Bob & Diane Hall
City Department

Other

Opponents

Groups or Individuals

Basis of Opposition

**Staff
Recommendation**

☐ For ☒ Against

Reason Against

overhead utility lines
located in easement

**Board or
Commission
Recommendation****By**

☐ For ☐ Against
☒ No Action Taken

☐ For with revisions to conditions
(See Details column for conditions)

**CITY COUNCIL
ACTIONS
(For Council
use only)**

☐ Pass ☐ Other
☐ Pass (as amended) ☐ Hold
☐ Council Sub. ☐ Do not pass

DETAILS

POLICY/PROGRAM IMPACT

Policy or
Program
Change

☐ No

☐ Yes

Operational
Impact
Assessment

(This space for further discussion)

Project Start

Date 19 February 1988

Projected Completion or Occupancy

Date 29 March 1988

Fact Sheet Prepared by

Date 29 March 1988

Patricia Biancaniello

Reviewed by

Date

Reference or Case Number

2/21/88

Diane Hall, petitioner appeared before the Commission. Ms. Hall presented a letter and diagrams of the property in question. The following is the contents of the letter and generally Ms. Hall statement to the Commission. "The purpose of this letter is to make you aware of the mishandling and the confusion involved in this petition. We applied for a building permit on February 16, it was denied. At that time we were informed about the utility easement, and the encroachment. We went to the Plan Commission office on February 16, we were informed at that time in order to rectify this we were to obtain a release of partial utility easement from all the utility companies by Max VanCamp. We started on this right away and had worked on it for 2 days. Then during a conversation with Pat Biancaniello we were informed not to do this it was the wrong procedure. Greg Purcell said we needed to file this petition with the City and we had to pay a \$100.00 filing fee. We then went to the Citizens Advocate office to try to get someone to explain to us what was going on, because

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by this time we were having problems with the Plan Commission. She called Gary Baeten, he said the petition filing was the proper procedure and not to contact the utility companies. We then filed the petition and paid \$100.00 on February 23. We were then informed of the time involved and the procedures after filing. On March 9 the public hearing sign was installed, March 14, the letter informing us of the hearing for March 21 was received. On March 15 at 4:00 P.M. Wayne O'Brien called our home he spoke to Bob (Bob Hall co-petitioner) for about 45 minutes. He called to inform us he was going to recommend a do not pass on our petition. His reason was that we were using the wrong procedure again, that we should not have filed this petition, but should have followed the initial procedure we had started out with. During the course of this conversation Wayne O'Brien proceeded to tell Bob he had not come out to our property to inspect the problem site, but had pulled into a street (Henry Street) 3 lots over to look across at our property. The view from there is nearly impossible and very misleading. He then said it was not possible to building on the side of our house. We want to build on the back of the house.

He then recommended that we not appear at the meeting and write a letter stating our withdrawal of the petition. He said the board followed his recommendation 95% of the time. He also informed us we needed to file for an encroachment permit from the utility companies, then to file another type of petition with the zoning board for a variance at a cost of \$50.00, then if these forms passed we should be able to receive a building permit. After this conversation. Bob called Pat Biancaniello to find out about obtaining these forms. She informed him she had worked there for 16 years and had never heard of an encroachment permit from the utility companies. She said even if we could do this and it passed, this didn't mean she would give us a permit to build unless we signed a waiver of liability with the city and still with all of this even if it passed they still had the power to deny the building permit.

That evening Bob contacted the VP of our neighborhood association, Lavon Reader and City Councilman Thomas Henry, to see if they could be of any help in this mess. Mrs. Reader spoke to Mr. O'Brien and tried to get him to come out to our property on March 16, he would not. Mr. Henry said he would get back with us but did not. On March 17, I went to the Boar of Zoning Appeals to speak to Rick Kunkel as told to by Wayne O'Brien. Mr. Kunkel said he had nothing to do with this and didn't understand why I was sent to him. I told him I was there to talk to him about an encroachment permit and variance. He said he had no

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jurisdiction over this matter and had worked there 18 years and never heard of an encroachment permit. I then asked him to introduce me to Mr. O'Brien. I asked Mr. O'Brien why all this was happening. He told me again we were following the wrong procedure and his recommendation was no pass. I asked him why he hadn't come to our property. He said it wouldn't make any difference. Mr. Kunkel at that time showed Mr. O'Brien our survey and pointed out that the easement lay on the property line of our adjoining lot and that our building plans were legal and within the proper limits.

At that time Mr. O'Brien admitted he could not tell from where he viewed our property that the adjoining lot was ours, this is pretty hard to miss being as this is our back yard and it is entirely enclosed by a chain link fence. We have 3 lots making up our property. I asked him again at this point to come to our house and look at the yard and house, he again said it made him no difference he was recommending DO NOT PASS, and the board would follow his recommendation. So I contacted I&M that afternoon. The following morning Mr. Householder from I&M called me at work this was March 18 to inform me there is no such thing as an encroachment permit. The only thing they issue is the letter they sent us in February.

I would also like to point out that we have made notes and markings on the letters that the Plan Commission sent out as to mistakes and misstatements. We have since this time spoke to the other utility companies, except Comcast Cable and there is no objection from them. Also they were not properly informed of the purpose of the petition by the Plan Commission.

We strongly feel that this problem has been mishandled by those involved, and has cost us unnecessarily in time lost from work, private time, and in the filing fee if this truly is the wrong procedure once again. All we want to do is improve our home and take care of the encroachment problem. Both of these things affect no other property other than our own.

Bob & Diane Hall"

Robert Warrington stated it seemed to him that I&M would need the air space for their wires. He stated also that they should obtain title insurance to insure against forced removable because of the encroachment in the easement.

Ms. Hall stated that they already have the insurance. Ms. Hall stated they have also talked to I&M, GTE & Comcast Cable and they

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have no problem with the encroachment. She stated she is expecting letters from these companies to that effect.

Mark Gensic questioned if anyone else is served by these lines.

Ms. Hall stated that the power lines run all the way from Goshen Road through all of the properties all the way up to West State Street.

Gary Baeten, Senior Planner with CD&P stated that he could clarify some of the confusion. He stated that the process for vacation is the process that was followed. He stated that there is only one way in the State of Indiana to vacate an easement and that is through this process. He stated that if you want the right to encroach in an easement that is an entirely different matter. He stated that you get the right to encroach in the easement by getting permission from those people who have the right to enter that property. He stated there was two processes you can take you pick but you cannot take half of one or half of the other. He stated that they filed a petition to vacate, they called the office they were told to get waivers.

John Shoaff stated that he gathered from what he had heard that the petitioners should proceed with the encroachment waiver process, which they had already undertaken, presumably that could lead to the resolution of the problem.

Gary Baeten stated that when they have all of the waivers they would have to supply the Land Use Management Office with copies of them so that we had some guarantee that they had the right to encroach. He stated that they could then simply write a letter to the Commission withdrawing the vacation request.

Following discussion a motion was made and seconded to defer the request until such time as the petitioners can work out the waivers with the utilities in the easement. Motion carried.

BILL NO. G-88-03-24

REPORT OF THE COMMITTEE ON REGULATIONS

WE, YOUR COMMITTEE ON REGULATIONS TO WHOM WAS
REFERRED AN (ORDINANCE) ^{XXXXXXXXXX}(~~RESOLUTION~~) amending the
Thoroughfare Plan of the City Comprehensive ("Master") Plan
by vacating a dedicated utility easement thereof

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID
(ORDINANCE) (~~RESOLUTION~~) withdrawn

YES

NO

Janet G. Bradbury

JANET G. BRADBURY
CHAIRPERSON
MARK E. GIAQUINTA
VICE CHAIRMAN
CHARLES B. REDD

David C. Long

DAVID C. LONG

PAUL M. BURNS

CONCURRED IN

4-12-88

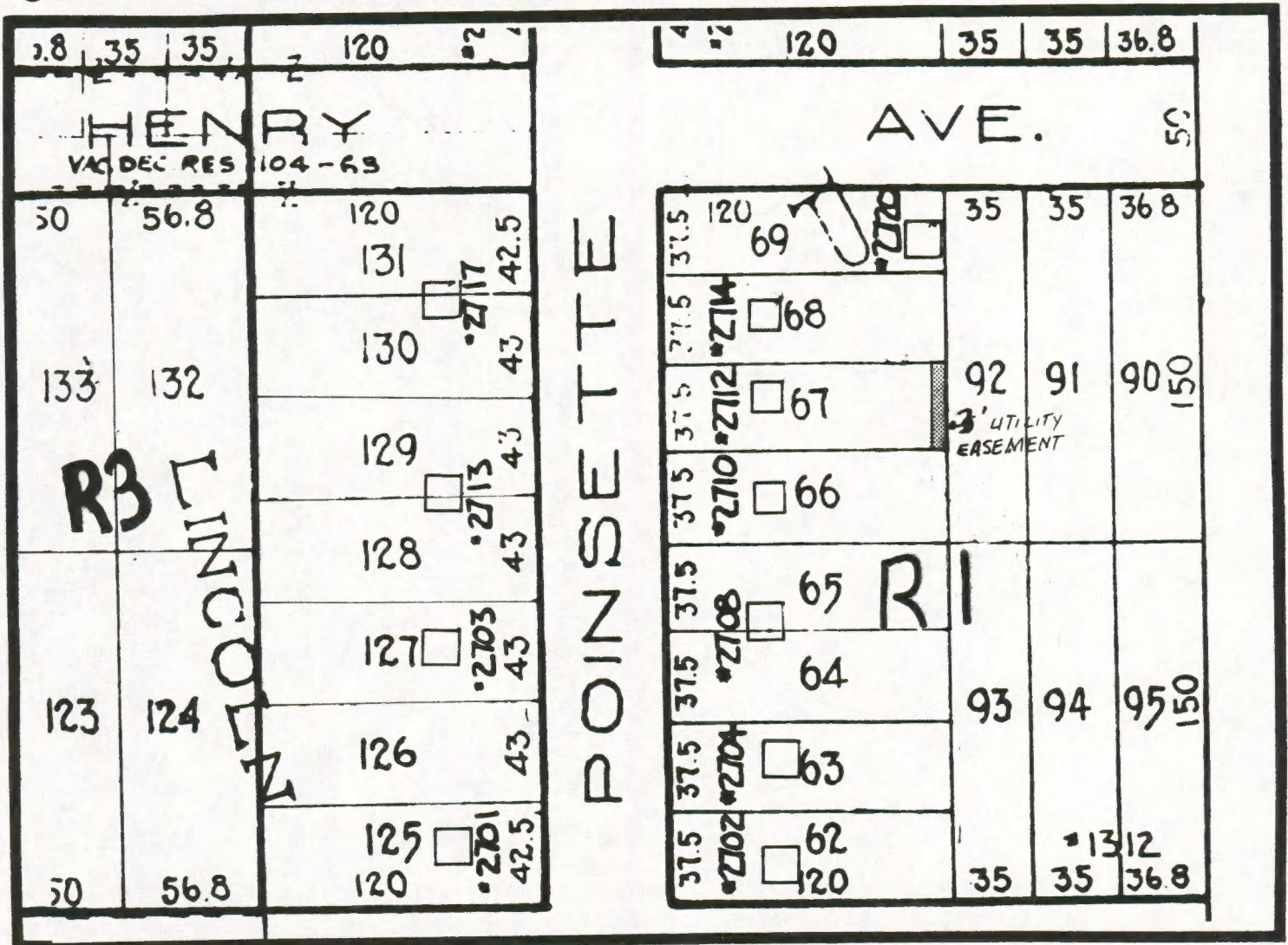
Sandra E. Kennedy
Sandra E. Kennedy
City Clerk

VACATION PETITION 332

A PETITION TO VACATE THE DESCRIBED PUBLIC UTILITY EASEMENT.

MAP NO. K-18

COUNCILMANIC DISTRICT NO. 3



ZONING:

R1 RESIDENTIAL DISTRICT
R3 RESIDENTIAL DISTRICT

LAND USE:

☐ SINGLE FAMILY

SCALE: 1" = 55'

DATE: 2-29-88

